

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**MISH INT’L MONETARY INC.,
on behalf of itself and
all others similarly situated,**

Plaintiff,

v.

VEGA CAPITAL LONDON, LTD., et al.,

Defendants.

Case No. 20-cv-04577

Hon. Manish S. Shah

JOINT STATUS REPORT

Plaintiff Mish International Monetary Inc. and Defendants Vega Capital London Ltd. (“Vega”), Adrian Spires (together with Vega, the “Vega Defendants”), Paul Commins, George Commins, Christopher Roase, Elliott Pickering, Aristos Demetriou, Connor Younger, James Biagioni, Henry Lunn, Paul Sutton, and Matthew Rhys Thompson (collectively, the “Trader Defendants”) respectfully submit this joint status report pursuant to the Court’s October 25, 2023 Order directing the parties to file a status report by December 14, 2023 addressing the progress of discovery in this Action. ECF No. 277.

I. Case Schedule and Background

On January 27, 2023, the Court set a discovery and class certification schedule for this Action (ECF No. 201) in response to the parties’ joint initial status report (ECF No. 196) and Defendants’ motion to bifurcate class certification and merits discovery (ECF No. 198). The Court permitted the parties to issue written discovery beginning on January 31, 2023, and set the following deadlines for class certification motion briefing and fact discovery:

- Plaintiff’s motion for class certification, including any supporting expert reports, due

January 22, 2024;

- Defendants' opposition to class certification, including any support expert reports, due March 4, 2024;
- Plaintiff's class certification reply, including rebuttal expert reports, due April 8, 2024; and
- Deadline for completion of all fact discovery, including foreign discovery, due December 30, 2024.

On July 12, 2023, the parties submitted a joint status report that detailed, among other things, the discovery accomplished through early July 2023. ECF No. 244.

On September 11, 2023, the Court granted in part and denied in part Plaintiff's motion to compel and the Trader Defendants' cross-motion for a protective order, permitting Plaintiff to depose up to four Trader Defendants in London prior to December 31, 2023. ECF No. 271.

On October 25, 2023, the Court held a status hearing (ECF No. 277), directed the parties to submit a status report on discovery progress by December 14, 2023 (*id.*), and entered the parties' stipulated deposition protocol. ECF No. 278.

II. Discovery Progress Since the Parties' Last Status Report Concerning Discovery

a. Depositions

Plaintiff recently deposed three Trader Defendants—Paul Commins (November 30, 2023), Elliott Pickering (December 5, 2023), and Matthew Rhys Thompson (December 7, 2023)—and will depose a fourth Trader Defendant, Henry Lunn, on January 5, 2023.

The Trader Defendants have noticed the deposition of Plaintiff and its principal, Robert Mish, for December 20, 2023, as well as the depositions of two non-party witnesses on December 14, 2023 (Mr. John Felag), and December 18, 2023 (Mr. Justin Boshnack).

Plaintiff served its objections to the Trader Defendants' twenty-eight (28) topic, Rule

30(b)(6) notice on December 6, 2023 and the parties have met and conferred concerning the topics and Plaintiff's objections. The parties have also conferred concerning the length of the Mish deposition and have reached an agreement that Defendants may depose Mr. Mish for one day of up to eight hours. Counsel for Plaintiff and counsel for the Vega Defendants plan to attend the two nonparty depositions noticed by the Trader Defendants scheduled for December 14 and 18 and reserved time to examine the witnesses if necessary.

b. Document Productions

Since the last joint status report, (ECF No. 244), the parties have received twenty-two (22) productions, mainly from nonparties, consisting of market and trading data, as well as communications. The following nonparties have produced documents in response to Rule 45 subpoenas since the July 12 status report: the Chicago Mercantile Exchange ("CME"), ICE Futures Europe, GH Financials LLC, Gain Capital Inc., Interactive Brokers LLC, Three Lakes Advisors, AMP Global, E*Trade, TD Ameritrade, High Ridge Futures, Vision Financial Markets and Trading Technologies.

c. Outstanding Subpoenas and the Vega Defendants' Efforts to Obtain Production

Defendants Vega and Spires have served subpoenas for documents on twenty-eight (28) companies that (according to Vega and Spires) are sophisticated traders frequently trading WTI contracts on the New York Mercantile Exchange ("NYMEX").

A. Through their counsel at Akerman, Vega and Spires served subpoenas on thirteen (13) companies: (1) Bank of China Limited; (2) BASF Intertrade Corporation; (3) BP Products North America, Inc.; (4) Citadel Securities LLC; (5) ExxonMobil Oil Corporation; (6) Glencore Ltd.; (7) Macquarie Inc.; (8) Mercuria Energy America LLC; (9) Petrochina International (America) Inc.;

(10) Repsol Trading USA LLC; (11) Shell Trading (US) Company; (12) Socar Trading North America LLC; and (13) Vitol Incorporated.

B. Vega and Spires have also retained Michelle Nasser of Dowd Bennett to represent them and to serve subpoenas on the following fifteen (15) additional companies: (1) Barclays Bank PLC; (2) BlackRock, Inc.; (3) BNP Paribas S.A.; (4) Capital One National Association; (5) Chevron USA Inc.; (6) Citigroup Inc.; (7) ConocoPhillips Company; (8) Goldman Sachs Group; (9) ING Capital Markets LLC; (10) JP Morgan Chase Bank NA; (11) Mitsubishi International Corporation; (12) Morgan Stanley; (13) Nomura Securities International Inc.; (14) Pacific Investment Management Company; and (15) Phillips 66 Co.

Position of Vega and Spires. Based on initial meet-and-confer conferences with some of the subpoena recipients, Vega and Spires anticipate that motion practice will likely be needed with respect to some number of the subpoenas. If a motion to compel is needed with respect to Bank of China, Vega and Spires anticipate that a motion will be filed in the U.S. District Court for the Southern District of New York, which is the place of compliance and which has frequently resolved motions to compel with respect to Bank of China and its anticipated arguments that it is not permitted to produce documents under Chinese law and that service of Bank of China cannot be effectuated through its New York branch. *See, e.g., Wultz v. Bank of China Limited*, 910 F. Supp. 2d 548 (S.D.N.Y. 2012). With respect to other motions, Vega and Spires will seek to file a consolidated motion to compel and transfer the motion to this Court for resolution from the various districts that would otherwise be the place of compliance. *See* FED. R. CIV. P. 45(f) (permitting transfer to the issuing court where the subpoena recipient consents or where there are "exceptional circumstances"); *see also id.* advisory committee's note to 2013 amendments (observing that "transfer may be warranted in order to avoid disrupting the issuing court's management of the

underlying litigation, as when . . . the same issues are likely to arise in discovery in many districts.").

Plaintiff has requested a meet-and-confer with counsel for Vega and Spires concerning the foregoing nonparty subpoenas recently served on Plaintiff. Based upon the outcome of the meet and confer process, Plaintiff is considering whether to file, and may file, a motion to quash one or more of the above referenced subpoenas.

On September 18, 2023, Plaintiff served a second Rule 45 document subpoena on Trading Technologies. The parties continue to consider whether additional subpoenas will be necessary.

d. Other Discovery Issues

Plaintiff continues to meet and confer with the Vega Defendants and the Trader Defendants about the status of their respective document productions, including the Trader Defendants' objections to producing documents they were previously compelled to produce to the Financial Conduct Authority ("FCA"). The parties are continuing to meet and confer, and will notify the Court in the event that its assistance is required to resolve any disputes.

Dated: December 14, 2023

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